

**TOWN OF NEWMARKET, NEW HAMPSHIRE
TOWN COUNCIL REGULAR MEETING**

August 19, 2015 7:00 PM

PRESENT: Council Chairman Phil Nazzaro, Councilor Dale Pike, Councilor Amy Thompson, Councilor Toni Weinstein, Councilor Larry Pickering

EXCUSED: Council Vice Chairman Gary Levy, Councilor Amy Burns

ALSO PRESENT: Town Administrator Steve Fournier, Interim Finance Director Matt Angell, Water & Wastewater Superintendent Sean Greig, Town Attorney John Ratigan

AGENDA

Chairman Nazzaro welcomed everyone to the August 19, 2015 Newmarket Town Council Meeting and called the meeting to order at 7:02 pm, followed by the Pledge of Allegiance.

Chairman Nazzaro announced that Vice Chair Levy and Councilor Burns were excused.

PUBLIC FORUM

Chairman Nazzaro opened the Public Forum at 7:03 pm and asked if anyone from the public wished to speak.

Mr. Leo Filion of Lafayette Road addressed the Council. He stated that he had served 25 years on the Newmarket Budget Committee and had attended a finance workshop several years ago put on by the New Hampshire Municipal Association presented by staff attorneys. The topic of the workshop was Warrant Articles presented at Town Meetings which call for a large expenditure of funds and bonding. He said it was stated that as soon as it is known that the Warrant Article cannot be completed with the approved funding, all expenditures would immediately cease until another Town Meeting either added to the funds or changed the purpose. He added that any article approved by the Town Meeting had both an amount and a purpose, and that once approved by the voters, no additional funds could be added without a subsequent Town Meeting and that no one could add additional funds to complete the job.

As no one else came forward, Chairman Nazzaro closed the Public Forum at 7:05 pm.

PUBLIC HEARING – None

TOWN COUNCIL TO CONSIDER ACCEPTANCE OF MINUTES

Acceptance of the Minutes of the Regular Meeting of July 15, 2015

Councilor Thompson made a motion to accept the minutes of the regular meeting of July 15, 2015, and Councilor Weinstein seconded.

Town Administrator Fournier polled the Council and the minutes of the regular meeting of July 15, 2015 were approved by a vote of 4-0, with 1 abstention.

Acceptance of the Minutes of the Non-Public Meeting of July 15, 2015

Councilor Thompson made a motion to approve the minutes of the Non-Public Meeting of July 15, 2015, which was seconded by Councilor Pike.

Town Administrator Fournier polled the Council and the minutes of the Non-Public Meeting of July 15, 2015 were approved by a vote of 4-0, with 1 abstention.

REPORT OF THE TOWN ADMINSTRATOR

Town Administrator Steve Fournier first reported on **County Dispatch Services**. He said that he had attended a meeting on Thursday, July 16th of the city and towns of Rockingham County with the County Commissioners, with the focus on current dispatch services they offered. He said the counties of New Hampshire are only required to provide very limited services and that dispatch was not a required service. The County Commissioners also reported that the current dispatch center was in great need of repair and updating, but that they did not want to bond for the updates and could not accept additional communities. Town Administrator Fournier said that he verified with the Commissioners that if Newmarket were to shut down their dispatch center the County could not take them on. He then asked for a written statement to that effect, and said that as a result, Rockingham County Dispatch was not an option for the Town. Councilor Pike asked if the services were supported by the entire county or just the communities that participated in the services, and Town Administrator Fournier replied they were supported by the entire county. Councilor Pike said that if Newmarket was paying but could not have the services, he had an issue with that, and Town Administrator Fournier said he would reach out to other communities without dispatch services. Councilor Pickering said that he was also not interested in paying for services the Town could not use. Town Administrator Fournier said it would take a significant investment to upgrade the County dispatch services, especially if all communities in Rockingham County were included. Councilor Pike felt that if dispatch was updated regionally, it would almost certainly be less expensive and more efficient than a town-by-town dispatch. Councilor Thompson said that as Newmarket had already invested in their dispatch center, would it be possible to serve as a county sub-contractor to help handle county overflow. Town Administrator Fournier said that the County would then lose its revenue if it paid municipalities, and Councilor Thompson pointed out that if towns stopped paying they would lose their revenue anyway. Chairman Nazzaro asked about the likelihood of the upgrades being made, and Town Administrator Fournier replied that he would not plan on it happening within the next 3 to 5 years. Chairman Nazzaro then asked what their legal recourse would be since they had zero

opportunity to take advantage of something they were paying for. Town Administrator Fournier said he would be talking with other communities but wanted to first discuss it with the Council.

Town Administrator Fournier next addressed the recent **Stage 3 Water Restrictions** placed on the Town. He said that pursuant to the Town Code Chapter 14 Section 26 and recommendation by the Water & Wastewater Superintendent, he had declared a water supply shortage and ordered the Water & Wastewater Department to impose Stage 3 restrictions regulating watering in the Town. He said that violations could result in fines from \$100 up to \$1,000, and that this emergency would only be discontinued when water in the Town wells returned to appropriate levels. He said so far they had seen no changes and that levels were still dropping, adding that he was meeting with the Water & Wastewater Superintendent daily for updates on the situation, but that they had not yet reached a Stage 4 emergency. Councilor Pickering stressed that the restrictions only applied to municipal users and not private wells. Councilor Weinstein asked Town Administrator Fournier what level they had reached, and he replied they were currently 3 feet from the screens. Water & Wastewater Superintendent Sean Greig explained that this meant they were 3 feet from shut offs, which was a certain level you do not want to go beyond as it could cause damage to the well, and that it all depended on rainfall for recharge. He added that Newmarket was not the only community in this situation. Chairman Nazzaro asked what would happen if the water reached the screens. Water & Wastewater Superintendent Greig said he was not sure, but that they had put in some new observation wells to track the workings of the aquifer, and that the Town had been this low before in 1996 and 2000. Councilor Pickering asked if they still had the ability to draft water from Follet's Brook to recharge the wells, and Water & Wastewater Superintendent Greig said they did not have the capacity at this time.

Town Administrator Fournier next addressed **FY2015 Year-End Financials**, emphasizing that these were estimates and not audited figures. He said that for the entire FY15 Budget, out of the \$8,672,983 appropriated, they were under-expended by \$137,838 or 1.5%. He said this included the General Fund, the Special Funds, and the Enterprise Funds. He said that for the General Fund, out of the \$6,089,345 appropriated, \$79,026 remained or 1.3%, and a 5-year comparison of unexpended funds was provided. He said the reason for the lower return of funds was due to budgeting closer to actual expenditures. With regard to revenues, \$21,295,816 were collected which was \$505,853 (2%) higher than anticipated. Town Administrator Fournier said they were anticipating the fund balance to be \$2,438,983.29 (8.91%) which was within the Fund Balance Policy, with figures subject to final audit. Councilor Thompson felt that it was great that they were budgeting tighter and that revenues were coming in higher than anticipated, but wanted to emphasize that going forward it was important to make sure they did not budget to unanticipated revenues. Town Administrator Fournier said they were using the extra revenue to offset Capital Reserve Funds rather than operational costs. Chairman Nazzaro said he would like to see the tighter budgeting against the actual budgets for each year.

Town Administrator Fournier stated that he was continuing to work on the **Salary Survey** and that the Finance Director was in the process of wrapping this up. He said that any changes or proposed changes would be done in the FY17 Budget. He added that Interim Finance Director

Matt Angell was working with department heads in re-examining job descriptions to make sure they are accurate. Town Administrator Fournier next reported that the **Auditorium Upgrade** had been completed with the installation of air-conditioning, a retractable projection screen, and new wiring. He said that they had been able to save money on the project and were looking to upgrade the A/V system and wiring in the Council Chambers. He stated that one of the first events to be hosted in the Auditorium would be the NHMA Municipal Law Lecture Series to be hosted on three (3) consecutive Wednesdays in October, and highly recommended attending.

Discussion of Department Head Reports: Councilor Thompson asked if a little more effort could be expended by the Public Works Department with regard to pursuit of the UNH paving plan. Town Administrator Fournier said they first had to get permission from the Department of Transportation as to funding for offsetting costs, and that he had offered the Town's assistance. Councilor Thompson said that she understood a paving schedule was being worked on, and felt the Town had roads that needed to be addressed. Town Administrator Fournier replied that nothing was scheduled until the spring paving season anyway, and that only Ash Swamp Road would be paved in the fall. Councilor Thompson commended Mr. Doug Poulin on the IT Department report and Interim Finance Director Angell on the clarity of his financial highlights. She said she had comments from Vice Chair Levy as well regarding Fire & Rescue and the possibility of replacing an ambulance. Chairman Nazzaro stated that Vice Chair Levy had also spoken to him on this issue and stressed there was just a potential they would be asking for the replacement. Councilor Weinstein said she had a question regarding the CopSync 911 Program which was scheduled to be operational by the start of the school year, wondering if the Perkins Building would be included. Councilor Thompson asked for the status on the cost schedule for the Bike Path, and Town Administrator Fournier replied that the State was still reviewing the project, which included looking into avoiding the extra 20% payment. Chairman Nazzaro stated that he did not recommend spending money on a TV set for the Council Chambers and that the projector was working fine. He asked for the status of the North Main Street Project, whether the Town would remain within the budget set, and Water & Wastewater Superintendent Greig said that it was under budget at this point.

MacIntosh Well Project Overage

Town Administrator Fournier stated that on the evening agenda was the first reading of a resolution authorizing the Town Council to apply for permission from the Department of Revenue for an emergency expenditure from Water Surplus in the amount of \$795,000 for overages on the MacIntosh Well Project. He said that the Town Council had recommended the issuance of \$2,502,600 in bonds in 2012 for the construction of the MacIntosh Well, based on figures put forth at that time by engineering firm Weston & Sampson. He said this figure included an additional \$100,000 approved by the Council for construction of a blending facility for future treatment. He stated that construction bids had gone out earlier this year, and that all five (5) bids received had come in higher than the original estimated cost. The lowest bidder was Waterline Industries with a proposed construction budget of \$2,121,677. Town Administrator Fournier provided a breakdown of costs expended by the Town to date totaling \$706,089. As a

result the Total Revised Project Budget came to \$3,297,766 which left a difference of \$795,166 with the \$2,502,000 Bonding Authority subtracted. Town Administrator Fournier said he had addressed this with Director of Water & Wastewater Sean Greig and Town Attorney John Ratigan. He said that NH RSA 32:11 provides a framework to address this type of issue allowing the Town to withdraw funds from surplus. He explained that an application would need to be submitted and that the Municipal Budget Committee must agree to the application. He stated that they were proposing to withdraw \$795,000 from the Water Fund balance, which would reduce the current funding to \$520,574. He said that he had already discussed the process with the Town Attorney and the DRA and that they would ultimately need approval by a Commissioner.

Town Attorney John Ratigan cited earlier comments by Mr. Filion regarding budgetary restrictions, but added that the legislature recognized that not everything that will happen in a Fiscal Year can be anticipated. He said the project could not be delayed as they were approaching dire water supply status. He said that he had spoken with Water & Wastewater Director Greig, called the Department of Revenue, and talked to Newmarket's municipal liaison explaining the circumstances and he was told that the statute was written specifically for this type of situation. He said that they needed to go through the steps laying out the facts in the application, obtaining the approval of the Budget Committee for the proposed expenditures, and submitting it to the Commissioner.

Town Administrator Fournier provided a review of how the Town had gotten to this point. He explained that back in 2012 when they went out for proposals from engineering firms, done at the same time as the Wastewater Project, neither of the projects kept the same engineering firms who submitted the original proposals. After review by new engineering firms it was determined that numbers were not adding up and the Town decided to go out to bid for the construction costs, also asking another engineering firm (Wright-Pierce) to provide an independent review of the figures. Town Administrator Fournier stated that Wright-Pierce confirmed that Hazen & Sawyer and construction firm proposals were correct. Councilor Pike asked when we were aware of the discrepancies, and Town Administrator Fournier said that the discrepancies found by Hazen & Sawyer were confirmed by Wright-Pierce to have been incorrect at the time of the original estimate. Water & Wastewater Director Greig stated that the original estimate was done in 2010, updated in 2012, and approved by the Town Council in January 2013 for bonding of \$2.5 million. Councilor Pike pointed out that Weston & Sampson figures were off by approximately 30%. Water & Wastewater Director Greig said that he had reviewed their original proposal to try to figure out what had gone wrong and discovered a number of errors, including the under-budgeting for the pump house and the cost of extending the directional drill. He said that there was no difference from what was planned and what was designed, and that the firm had missed the estimate.

Councilor Pike asked if Weston & Sampson had any responsibility to the Town. Town Attorney Ratigan replied that he did not have enough information about the situation to render a judgement as to negligence at this time. Councilor Pike said that he would like to get a little more information on the issue to see if anything could be done. Councilor Thompson asked when

it had come to light that the estimate was so far off and Water & Wastewater Director Greig said that bids were received on June 25th and were sent to the engineering firm for review. He then sent a memo to the Town Administrator on July 16th. Councilor Thompson questioned “project delays” on page 4 of the report which she thought were due to the Town Council, and Town Administrator Fournier replied that there were no cost delays by the Council or any Town agency. Chairman Nazzaro said that he had three questions regarding the issue, the first being how we got in this situation in the first place. He asked if there was a breakdown of line items and which of the line items had come in higher. Water & Wastewater Director Greig said that pump house planning costs had come in lower than the actual low bid and should have been higher. He said that an Opinion of Probable Costs by Weston & Sampson was provided on page 5 of 16 of the report listing line items. Chairman Nazzaro pointed out big money in blending facilities and distribution system improvements, and Water & Wastewater Director Greig said that the different bids had more money in different line items. Chairman Nazzaro asked how the Town became involved with Weston & Sampson in the first place, and Water & Wastewater Director Greig replied that they were selected by a group of staff members and were on State engineering-approved selection lists. Chairman Nazzaro felt it was important that the State be notified and Water & Wastewater Director Greig said the State was already aware of what was going on.

Chairman Nazzaro said his second question was what to do now, as funds were being requested from the fund balance, and asked what the original plan had been for those funds. Water & Wastewater Director Greig stated that several projects were going forward and that they were also looking into developing another well to increase the water supply. Chairman Nazzaro asked how these plans would be impacted, and Water & Wastewater Director Greig said they might have to reassess which projects would go forward and how they would proceed. Chairman Nazzaro asked what they would not be doing because of this, and Water & Wastewater Director Greig said they were still moving forward with all intended projects. He said that bond payments had been building up in the fund balance which they had not yet had to start paying. Interim Finance Director Matt Angell gave a review of the finances, stating that there was \$1.3 million in available fund balance and that he had established that a good amount to retain was approximately \$530,000. He said he had used an estimate of 3 months retainage of \$236,000 (3 months of operations) as a rule of thumb, and added \$300,000 for emergency projects to reach the figure of \$536,000. Chairman Nazzaro asked Town Attorney Ratigan again if this was a legal recourse without having to go back to another Town Meeting, and he replied absolutely.

Chairman Nazzaro then asked what systems were being put in place to make sure this never happened again. Town Administrator Fournier replied that in future, before going into a project like this, he planned to get a second set of eyes from an independent engineering firm for review. He said they would check references, work with individuals, and talk with other communities. Chairman Nazzaro said he would like to see something codified for the Town. Councilor Thompson raised concerns about potential rate increases to water and sewer users. Water & Wastewater Director Greig said the recent rate increases had been for sewer and not water, and that the last water increase was in 2011, with Newmarket having one of the lowest rates.

Councilor Thompson said she would like to review the rates at some point. Town Administrator Fournier stated that it was announced in 2013 that bonding would have no impact on tax or water rates.

COMMITTEE REPORTS

Councilor Pike reported on the Planning Board meeting of the prior week saying the agenda had been fairly light. He said the Elm Street project had been on the agenda but was given a continuance and would be on the next agenda. He said that the Housing and Demographic Chapter of the Master Plan had been approved.

Councilor Weinstein reported on the initial Capital Improvement Program (CIP) Committee meeting which was held on August 6th. She said that Rose-Anne Kwaks had been elected as Chairman with Russ Simon as Vice Chairman. She said that there was a discussion of the rules of proceedings for the committee and forms were reviewed. She said they had discussed a final report being put together by Diane Hardy, which would be a manual explaining projects for the Council and available to the public. She said that they also discussed touring facilities to determine needs and that the Department Heads would be presenting to the CIP Committee on September 15th.

Councilor Thompson reported on the Joint Economic Development/Planning Board meeting held 2 weeks prior, and said she had been unable to attend but that Vice Levy had been there. She said the minutes would be available online for anyone interested. Councilor Pike said that he had watched the video and that the main thing would be zoning changes that the Planning Board would be recommending to the Town Council. Councilor Thompson said these would be based on business uses and would look at the increasing marketability of certain desired sites in Town in zones B2 and B3.

OLD BUSINESS

ORDINANCES AND RESOLUTIONS IN THE 2ND READING

Resolution #2015/2016-03 Accepting Harvest Way as a Town Street

Councilor Weinstein made a motion to approve *Resolution #2015/2016-03 Accepting Harvest Way as a Town Street*, which was seconded by Councilor Pike.

Discussion: Councilor Pike asked if the Town would now be plowing the street, and Town Administrator Fournier said that they had already been doing that after an agreement with Epping in 2002. Councilor Pike asked what would be changing with this resolution and Town Administrator Fournier replied that the ownership of the road would go from the Homeowners Association to the Town, which had been delayed due to some issues. He said that after receiving confirmation of the approval by Epping, the Town would now be moving forward making

Harvest Way a Town road, which would have to be paved and maintained in the future. He said that they also held a bond in case of any issues. Councilor Weinstein felt this was a long time coming and felt it would be a benefit to the residents and taxpayers of the area. Councilor Pickering said that he noticed there was ornamental lighting along the road and assumed Newmarket would be taking on ownership. Town Administrator Fournier said they would only take care of the road and that lighting problems would need to be addressed by the Homeowners Association.

Town Administrator Fournier polled the council and *Resolution #2015/2016-03* was approved unanimously by a vote of 5-0.

Resolution #2015/2016-04 Awarding Liquid Propane, Regular Gasoline, and Clear Diesel

Councilor Thompson made a motion to approve *Resolution #2015/2016-04 Awarding Liquid Propane, Regular Gasoline, and Clear Diesel*, which was seconded by Councilor Weinstein.

Discussion: Interim Finance Director Matt Angell explained that every year the Town goes out to bid for most of its energy needs. He said the results of this particular RFP were for liquid propane, regular gasoline, and clear diesel, and that in most cases they would be paying much less than last year. He said he had put the RFP in newspapers and called local vendors but only received two (2) proposals. Councilor Pickering said that since the prices were received, fuel costs had dropped significantly and asked if the price could be re-negotiated. Interim Finance Director Angell said that this could possibly be done but that it would mean not approving Resolution #2015/2016-04 at this meeting. Councilor Thompson asked if the prices were lower compared to last year. Interim Finance Director Angell said that they were and that liquid propane was \$1.69 last year and \$1.49 this year, regular gas was the same price over rack, and that clear diesel had dropped from \$3.26 last year to \$2.40. Town Administrator Fournier pointed out that if gas prices dropped based on the rack, they would get that benefit.

Town Administrator Fournier polled the council and *Resolution #2015/2016-04* was approved unanimously by a vote of 5-0.

Resolution #2015/2016-05 Authorizing the Town Administrator to Enter into an Agreement for Asphalt

Councilor Weinstein made a motion to approve *Resolution #2015/2016-05 Authorizing the Town Administrator to Enter into an Agreement for Asphalt*, which was seconded by Councilor Thompson.

Discussion: Town Administrator Fournier explained that this resolution allowed the Town to get into the queue for asphalt, setting a price per unit. Councilor Thompson again requested a price comparison. Interim Finance Director Angell said that the price was roughly the same, but that

he did not have the price comparison for last year available. He did note that last year they only had one (1) bid, but had two (2) bids this year and that they were seeing increasing competition.

Town Administrator Fournier polled the Council and the motion to approve *Resolution #2015/2016-05* passed by a vote of 5-0.

ITEMS LAID ON THE TABLE - None

NEW BUSINESS/CORRESPONDENCE

TOWN COUNCIL TO CONSIDER NOMINATIONS, APPOINTMENTS AND ELECTIONS

Newmarket Housing Authority

Candidate: *John Reddy – Term Expires March 2019*

Councilor Weinstein made a motion to approve the nomination of *John Reddy*, Term to Expire March 2019, as a *Newmarket Housing Authority Representative*, which was seconded by Councilor Thompson.

Town Administrator Fournier polled the Council and the motion to approve the appointment of *John Reddy* as a *Newmarket Housing Authority Representative*, passed unanimously by a vote of 5-0.

Town Organizational Study Sub-Committee - Appointment of Council Representatives

Chairman Nazzaro said that as every Council member wanted to be on the Organizational Sub-Committee, he had selected Councilor Burns, Vice Chair Levy, and himself to make up the membership in an attempt to build a fair and equitable committee. He said he felt this would bring viewpoints from across the spectrum of the Council. Town Administrator Fournier made sure they had voted to change the rules allowing the Chairman to make the selections.

ORDINANCES AND RESOLUTIONS IN THE 1ST READING

Resolution #2015/2016-07 Emergency Expenditure of Funds for the MacIntosh Well Project for \$832,000 per RSA 32:11

Chairman Nazzaro read *Resolution #2015/2016-07 Emergency Expenditure of Funds for the MacIntosh Well Project for \$832,000 per RSA 32:11*, in full. He asked Town Administrator Fournier why the \$832,000 figure was different from previously discussed, and Town Administrator Fournier said it was in the packet and the email with backup information provided.

Resolution#2015/2016 Withdrawal of School Impact Fees – Carpenter Property

Chairman Nazzaro read *Resolution #2015/2016 Withdrawal of School Impact Fees – Carpenter Property*, in full.

CORRESPONDENCE

Councilor Weinstein said that she had been contacted by John Kyper regarding a coalition of concerned community members working to address the heroin crisis in Newmarket. She said the group, the Newmarket Substance Abuse Coalition, was composed of community members, the pastor of the Community Church, one of the police detectives, and Lamprey Health, etc. and that a meeting would be held on Tuesday at 1:00 pm in the basement of the Community Church. Chairman Nazzaro said they had all received correspondence regarding Church Street paving and that the Town Administrator had communicated with residents. Councilor Thompson said that she had not received the email and asked that Councilor contacts on the website be updated to include her and Councilor Burns, as all Council members needed to be accessible.

CLOSING COMMENTS

Councilor Pickering said that having additional revenue was a good thing but that he would like to move the discussion of properties not paying taxes forward, if possible. He said that someone may want to purchase a property consisting of a parking lot at the foot of Bay Road. Town Administrator Fournier said that they had lost members who were part of the original committee Councilor Pickering was referring to, and that the Council could add another member and continue the process. Chairman Nazzaro asked if anyone was interested in being on the Town land for sale committee, and Councilor Weinstein volunteered. Councilor Pike felt the Town should not sell any parking areas, and Chairman Nazzaro said the purpose of the committee would be to look at that and come back with recommendations.

Chairman Nazzaro stated that the next meeting would be held on September 2, 2015.

ADJOURNMENT

Councilor Pike made a motion to adjourn the meeting, which was seconded by Councilor Weinstein. The meeting was adjourned at approximately 8:32 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary